IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3549 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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HUSSAINBANU ABDULSATAR KAZI

Versus

UNION OF INDIA

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Appearance:

1. Special Civil Application No. 3549 of 2001
MR AKIL KURESHI for Petitioner No. 1-2
RULE SERVED for Respondent No. 1-2
MR BIPIN I MEHTA for Respondent No. 3

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CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 27/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. The petitioners by this petition challenge the judgment and order passed by the Central Administrative Tribunal, Ahmedabad in O.A.No. 152/99 and Review Application No. 36/2000.

2. The petitioners are widow and son of late Abdulsatar Hasambhai Kazi who was serving as Technical Supervisor under the Telecom District Manager, present respondent no. 3. He died on 02.08.1995 leaving behind the widow and two sons and a daughter. The elder son Munuf has married and was living separately with his family even during the lifetime of his father. The petitioner no. 1 being a widow aged 54 years was not in a position to take up the service. Therefore, application for compassionate appointment with respect to the petitioner no. 2, the second son was made with an averment that due to untimely death of the employee, the financial condition of the petitioners has deteriorated and it was very difficult to meet the two ends. The petitioner no. 2 has studied upto B.Com. and registered his name in the employment exchange also, however, the application made for compassionate appointment came to be rejected by the authorities on the ground that the High Power Committee, New Delhi had rejected the request in view of the financial resources and size of the family.

3. The said decision was challenged by filing application being O.A.No. 152/99 before the Central Administrative Tribunal, Ahmedabad. The Tribunal rejected the application by rejecting the submission of the petitioners that the decision taken by the High Power Committee was arbitrary and unreasonable. On merits, the Tribunal held that the financial condition is not at all indigent and therefore there is no need for compassionate appointment. Hence, there is no reason to direct the respondents to reconsider the case of the petitioners for compassionate appointment. Against the said decision of the Tribunal dated 16.3.2000, the petitioners also filed an application for review being R.A.No. 36/2000. The same was also rejected on 27.7.2000. As state above, both the decisions are challenged in this petition.

4. Learned counsel Mr.Qureshi for the petitioners submits that the department has not considered the fact that substantial portion of the DCRG amount received by the family of the deceased was used for paying the debts of the deceased. According to the learned counsel, the

major portion of the DCRG amount was used for paying the past dues of the deceased which he has incurred during his lifetime and due to this the petitioners were left with very little amount from the originally received by way of DCRG. Learned counsel further submits that the petitioner no. 2 has also got married and has three children. Looking to the additional number of members, it is not possible for the family to sustain itself from the small amount of family pension received, which also will further diminish after specified number of years as per the departmental rules. Therefore, the matter requires reconsideration by the Department. We see no merits in the submission of the learned counsel for the petitioners. The High Power Committee was required to decide the application filed by the petitioner for compassionate appointment as per the averments made in the application and as per the circumstances of the family prevailing at the relevant time. Going through the scheme for compassionate appointment, it is clear that it provides that the liability shall be taken with respect to the date of application and not the date of appointment etc. The Tribunal has also negatived this very contention by observing that the applicant by his follies creates more liabilities then for that the Government cannot be made answerable. Further more, the submission of the applicant on the contrary gives rise to an inference that the applicant was in a position to maintain not only himself but the family of five members and therefore they are not in indigent position. Logic suggests that a man would not have created more liabilities if he was not in a position to discharge those liabilities. If the financial position of the applicant was not sufficiently sound, he would not have married and would not have begotten children. He would have desisted from creating further liabilities till he was sure of maintaining his and his family. This conduct of applicant in getting married and begetting children defeats the argument that the family was in a financially unsound position and this was a fit case for consideration on the part of the high power committee for compassionate appointment of the applicant no. 2. In our opinion, the reasonings of the Tribunal are just and proper warranting no interference. In our opinion, the fact that the petitioner no. 2 had not only married after making the application but has also begotten children and is maintaining the family of five suggests that the financial condition of the family is not at all indigent. From the record, it appears that the petitioners are receiving family pension of Rs.2,372/per month and had also received Rs. 2,71,667/- towards the retirement benefits of the deceased employee. Thus,

assuming that a substantial portion of the amount was spent for paying the debts, Rs.2,372/- per month by way of family pension for the family of two cannot be said to be inadequate amount.

5. During the course of hearing, we inquired from the learned advocate for the petitioners that is there any other source of income of petitioner no. 2. We are informed that the petitioner no. 2 is plying rickshaw in the city of Bhavnagar. The amount earned from the said occupation is not sufficient and therefore he really requires the compassionate appointment. We have suggested the learned Addl.Standing Counsel Mr.Mehta for the respondents to inquire from the respondents as to something can be done for the petitioner no. 2. Today, when the matter is called out, Mr.Mehta placed on record the letter received from Assistant General Manager (Admn.), GMTD, Bhavnagar dated 28.01.03. Perusing the same, it appears that the authorities have informed that compassionate ground appointment is not possible, however, the respondents have offered alternate arrangements by offering the petitioner no. 2 STD/PCO on commission basis, VCC Card agencies on commission basis and internet dhaba also on commission basis on the prevailing rules and regulations of the Department. In our opinion, the petitioner being a graduate can certainly make use of the offers given by the Department, however, we are informed that the petitioner no. 2 is not interested in accepting any of the proposals of the respondents. We accordingly close this topic without further discussion. There being no substance in the petition. the petition fails and is therefore rejected. Rule discharged with no order as to costs.

( K.R.VYAS, J )

( SHARAD D DAVE, J )

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